

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAURA K. SCHATZ
Claimant

VS.

AL'S CHICKENETTE
Respondent

AND

KANSAS RESTAURANT & HOSPITALITY
ASSOC. SELF-INSURANCE FUND
Insurance Carrier

Docket No. 1,015,074

ORDER

Claimant requests review of the May 11, 2004 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge (ALJ) found claimant failed to sustain her burden of proving timely written claim as required by K.S.A. 44-520a. The ALJ concluded that the circumstances of claimant's accident did not trigger the statutory requirement for respondent to file a report of accident. Accordingly, the statutory time period in which claimant had to file her claim was 200 days from her date of injury. Because claimant filed her claim outside that period, the ALJ denied her claim.

The claimant argues that the ALJ erred in denying her benefits. The claimant contends the respondent failed to file an accident report once it had knowledge of her injury as required by K.S.A. 44-557. As a result, claimant maintains she is entitled to a full year from the date of accident in which to file her claim.

Respondent asserts the ALJ's findings are consistent with the statutory provisions and the preliminary hearing should therefore be affirmed.

The only issue to be determined is whether claimant asserted a timely written claim for her alleged work related injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The ALJ's recitation of the facts is accurate and extensive and is hereby adopted by the Board. Claimant alleges an injury commencing February of 2001 and continuing up to April 6, 2003, while working for respondent as a fry cook. In this position she would regularly lift chicken fryers. Claimant began experiencing pain and cramping in her right wrist and hand, slowly up into her elbow and later into her right shoulder. In February or March 2001, claimant reported her complaints to Lina Miller, a co-worker and immediate supervisor. Ms. Miller is also the daughter of Donna Schmidt, respondent's owner. Ms. Miller referred claimant to Ms. Schmidt. Although claimant informed Ms. Schmidt of her hand complaints, she admits she never expressly attributed her pain to her work duties nor did she request any medical treatment.

Claimant testified that over the next two years she had a total of 4-5 conversations with Ms. Miller and/or Ms. Schmidt about her pain and hand complaints. At no time did her job duties change nor did she seek out any medical treatment. At no point did respondent file any Employer's Report of Accident with the Kansas Division of Workers Compensation or provide any benefits under the Kansas Workers Compensation Act (Act).

On April 6, 2003, claimant voluntarily quit her job with respondent due to a personal issue with Ms. Schmidt's son Noel. Claimant proceeded to find employment elsewhere first at Village Inn and later at Montana Mike's.

On January 25, 2004, 295 days after her last day of work for respondent, claimant completed form K-WC E-1, Application for Hearing (E-1). The E-1 was filed with the Division of Workers Compensation on January 29, 2004.

The ALJ concluded claimant's date of accident was April 6, 2003 under the *Treaster* rationale.¹ The Board agrees with the ALJ's reasoning and affirms this finding. As stated by the ALJ, claimant's right to compensation and the time limits for initiating her claim began with her April 6, 2003 date of accident.²

¹ *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

² K.S.A. 44-535 (Furse 2000).

The Act, specifically K.S.A. 44-520a, provides that no claim for compensation can be maintained unless written claim is served within 200 days of the date of accident.³

In denying claimant's claim, the ALJ offered the following reasoning:

Claimant was afforded no compensation by [r]espondent to toll the operation of K.S.A. 44-520a(a). Claimant's first written claim for compensation was the form E-1 Application for Hearing, which she completed on January 25, 2004. While the record is unclear as to what date [r]espondent actually received [c]laimant's completed form E-1, it could not have been before January 25, 2004. January 25, 2004 is 295 days after April 6, 2003. Claimant's claim would thus be barred for failure to submit timely written claim unless the provisions of K.S.A. 44-520a were otherwise tolled.⁴

Claimant asserts that the provisions of K.S.A. 44-520a were tolled by the provisions of K.S.A. 44-557. That statute provides, in pertinent part, as follows:

(a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

* * *

(c) No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident had not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

³ K.S.A. 44-520a (Furse 2000).

⁴ ALJ Order (May 11, 2004) at 3.

The ALJ concluded that “the circumstances of [c]laimant’s accident did not trigger the requirement for [r]espondent to submit an Employer’s Report of Accident.”⁵ Thus, claimant’s claim was not timely filed. Put simply, the ALJ found that “claimant’s injuries did not incapacitate her at any time, wholly or partially. She continued to do the same work, in the same manner, until she quit for reasons unrelated to her injuries. Claimant’s last day worked would be deemed her ‘date of accident,’ but since she left work for personal reasons unrelated to her work injuries, there was nothing for [r]espondent to report as an ‘accident’ on April 6, 2003.”⁶

The Board has considered the parties’ arguments and finds the ALJ’s findings of fact and conclusions of law are sound. The Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on this that right depends.⁷ The statutory scheme clearly places strict time limits upon a claimant to assert his or her claim. Those limits are altered only under certain circumstances. Under these facts, claimant did not assert her claim within 200 days of the date of her accident, and there is no factual basis to implicate the tolling provisions of K.S.A. 44-557. Thus, the ALJ properly denied claimant’s claim as untimely. The ALJ’s preliminary hearing order is affirmed.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated May 11, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2004.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ *Id.* at 4.

⁶ *Id.*

⁷ K.S.A. 44-501(a)(Furse 2000); *see also Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993) and *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).